

### **REMARKS**

Applicants have carefully considered the Office Action dated May 30, 2007 and the references cited therein. Applicants provide this response in a sincere effort to place the application in condition for allowance. Accordingly, reconsideration is respectfully requested.

In the Amendment, claims 15-22, which are directed to a non-elected group, have been cancelled without prejudice. New claims 23-31 have been added. Accordingly, claims 1-14 and 23-31 are presented for consideration.

In the Office Action, claim 2 has been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The Office Action contends that one skilled in the art would not be able to make the invention which defines the container as including "an interior surface shaped to direct products within said container towards said cutting member".

Applicants respectfully traverse this rejection. The specification at paragraph 17, discloses that "the inner surface of the container cover 18 is preferably contoured so as to form a slope toward the cutting blade. This helps eliminate excess frozen dessert product from being trapped between the cover and the blade." The contoured surface of the container is shown in Figures 4-9 of the drawings. Applicants respectfully submit that the specification provides enabling disclosure of a container interior surface which can be shaped to direct

products towards a cutting member. Therefore, Applicants respectfully submit that claim 2 complies with §112, first paragraph.

Claims 2-3 and 9-14 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. With regard to claim 2, the Office Action indicates that the language “an interior surface shaped to direct products within said container towards said cutting member” is not clear as to what shape would have that effect. As stated above with regard to the §112, first paragraph rejection, the specification provides disclosure as to the container shape. Applicants respectfully submit that when reading the claims in conjunction with the specification, the claim language would be clearly understood by one skilled in the art.

With regard to claims 3 and 9, the Office Action indicates that the phrase “low speed, high torque motor” is not clear because it would be unclear as to what is considered low or high. Applicants have amended claim 9 to remove this feature. With regard to claim 3, Applicants respectfully submit that in the field of food preparation appliances, the type of motor which is defined in the claims would be well known to one skilled in the art. The term “low speed high torque motor” is used in the art to describe a general type of motor which will develop relatively high torques at low speeds. Accordingly, Applicants respectfully submit that the claims comply with §112, second paragraph.

Claims 1-6 and 8-13 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,199,112 to (“McLean”). The Office Action contends that McLean teaches a device comprising a base and an electric motor and a removable container 18

having a feed vessel 24. Within the container is a cutting member 32 with a slot and a cutting edge 40. The Office Action also contends that the reference discloses a mixing blade 20 adjoining an inner surface of the container, Figure 1. Applicants respectfully traverse the rejection under §102(b).

The present invention as defined in claim 1, which has been amended to clarify claim language, sets forth an apparatus including a base, an electric motor mounted to the base, and a container removably mounted to the base. The apparatus includes a cutting member having a cutting edge. A feed vessel is provided for receiving food products, and the cutting member is positioned to engage food products introduced into the feed vessel. The container is positioned to receive food products from the feed vessel after they have engaged the cutting member and passed through an opening therein. The apparatus also includes a mixing blade in the container for blending food products engaged by the cutting member. Accordingly, in the present invention, both a cutting member having a cutting edge and a mixing blade for blending food products are provided for operating on the food products. This arrangement permits the food introduced through the feed vessel to be cut to a desired consistency by the cutting member and then blended together using the mixing blade.

Applicants respectfully submit that McLean fails to teach a mixing blade. McLean describes a food processor which may be used with either a multi-functional cutting disc 32 or a chopping cutter 20. The Office Action contends that the chopping cutter 20 corresponds to the "mixing blade" defined in claim 1. In column 2, lines 51-55, Mclean teaches that element 20 is a cutting mechanism with cutters that perform chopping operations on foods.

The cutting mechanism, also referred to as chopping cutters (column 3, line 16), is not a mixing blade for blending food products as defined in claim 1.

In the food preparation art, the cutting and mixing have different meanings. The “Description of the Prior Art” section of McLean recognizes that in food processing, cutting food and mixing food operations are different and use different tools. Column 1, lines 21-27. This difference is further illustrated, for example, in U.S. Patent No. 4,387,860 which discloses a separate mixing element 20 and cutter element 21 and cutter blades 26-28 (Figure 1), and in U.S. Patent No. 5,156,084 which discloses a slicing member 3 having slicing blades 42 (Figure 3) and a mixing member 5 (Figure 4). The present specification in paragraphs 12 and 14 also makes clear the difference between a cutting blade and a mixing blade. The mixing blade blends the products without causing substantial changes in the food. Chopping cutter 20 of McLean is clearly a cutting blade for chopping up food and it is not meant to blend food such as a mixing blade. There is no teaching in McLean to use any type of a mixing blade. Both the cutting discs 32 and the chopper blades 20 are meant for cutting up food, not for mixing it. Accordingly, Applicants respectfully submit that claim 1 is patentably distinguishable over McLean.

Additionally, in the invention defined in claim 1, both the cutting member and mixing blade operate on the food product. After the food engages the cutting member, the engaged food is blended by the mixing blade in the container. In contrast, McLean teaches that the chopping cutters 20 and cutting disc 32 are to be used separately. In McLean, column 3, lines 12-19, it states that “it is known to provide one or more cutting discs 32 that may contain rasping or grating or slicing cutters”. It further states, “[s]uch disc cutters are used separately from the chopping cutters 20 . . .” (Emphasis added.) McLean goes on to teach

that instead of having multiple cutting discs for different cutting operations, as found in the prior art, the invention includes a cutting disc that can perform multiple cutting functions. Column 3, lines 19-52. Accordingly, McLean specifically teaches that the disc cutter and chopping cutters are to be used separately.

Applicants note that while Figure 1 shows a chopping cutter 20 and cutting disc 32 in a bowl 18, it is clear from the specification that Figure 1 is not teaching that the cutting disc and chopping cutter are to be used together, but is showing the positioning of two different alternate cutting devices when they are separately used.

The separate use of the chopping cutter and cutting disc is further supported by the very purpose of the cutting disc of the McLean invention. McLean in column 3, lines 53-68, describes the disc shown in Figure 2, which includes a slicer 40 provided on the upper surface of disc 32. The disc 32 also includes various cutting members which achieve different cutting functions such as a shredder 42. The disc is designed so that it provides different cutting functions whether it is rotating clockwise or counterclockwise. In addition, as discussed in Column 4, lines 39-50, the disc can be reversed in order to provide additional cutting members. Therefore, the very purpose of McLean is to provide a variety of cutting operations using a single disc. Column 2, lines 20-25. The different cutting operations result in a food which is cut to a specific desired consistency.

Based on the teachings of McLean, it would be detrimental if the cutting disc were used with the chopping cutters 20. The purpose of McLean is to be able to control the type of cutting action through the use of a multifunctional disc. However, the variation of cutting

functions of the cutting disc would be irrelevant since no matter how the food comes out from the disc, it would end up being chopped up. Accordingly, when analyzing the cited reference as a whole, it is clear that the chopper cutters 20 and cutting disc 32 are not to be used together.

Accordingly, Applicants respectfully submit that claim 1, and those claims depending therefrom, patentably distinguish over the references of record.

With regard to claim 9, Applicants submit that this claim defines a container which includes a means for slicing food products and a mixing blade for blending food products. Claim 9 has been amended for clarity purposes. As set forth above with respect to claim 1, Applicants respectfully submit that the cited reference fails to disclose the use of a mixing blade, and further fails to disclose a device having a means for slicing food products and a mixing blade for mixing the food products. Accordingly, Applicants respectfully submit that claim 9, and those claims depending therefrom, patentably distinguish over the references of record.

Applicants have added claims 23-31, and favorable consideration of these claims is respectfully solicited.

Independent claim 23 is directed to an apparatus for producing dessert products and defines a cutting member and a mixing blade which are disposed together in a container. The mixing blade includes at least one vane extending in a radial direction from a central hub with the vane being configured for non-cutting engagement with the food products. McLean

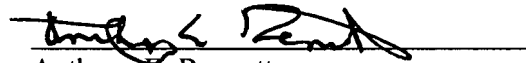
discloses only cutting devices in the form of a cutting disc 32 and chopping cutters 20 which are used separately. The reference, therefore, fails to disclose a mixing blade having a vane configured for non-cutting engagement with food, and also fails to disclose a mixing blade used with a cutting blade.

Independent claim 27 defines an apparatus for producing dessert products including a cutting blade for cutting food products from a feed vessel and dropping them into a container; and a mixing blade disposed in said container. The mixing blade is defined as having a first blunt food engaging surface for blending the food products processed by the cutting blade. As noted above, McLean fails to disclose a mixing blade having a blunt surface for mixing and also fails to disclose an apparatus which includes both a cutting blade and mixing blade in a container as claimed.

As a result of the amendment and remarks set forth above, favorable reconsideration of claims 1-14, favorable consideration of new claims 23-31, and allowance of the application with claim 1-14 and 23-31 are respectfully solicited.

If the Examiner believes that a telephone interview would be helpful in moving this case toward allowance, he is respectfully invited to contact Applicants' attorney at the telephone number set forth below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anthony E. Bennett', is written over a horizontal line.

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